



AFGHANISTAN HOUSING, LAND AND PROPERTY TASK FORCE (HLP TF)

NATIONAL COORDINATION MEETING MINUTES 20th May 2014

Participants:

UN-Habitat, Norwegian Refugee Council (NRC APC Co Coordinator and Shelter PM), Afghan Independent Human Rights Commission (AIHRC), United Nations High Commissioner for Refugees (UNHCR: Protection and Programme), Independent Directorate of Local Governance (IDLG)/General Directorate of Municipal Affairs (GDMA), Ministry of Justice (MOJ-HRSU), Ministry of Urban Development Affairs (MUDA), Italian Embassy, UN OCHA, International Organisation for Migration (IOM), United States Institute of Peace (USIP), Afghanistan Research and Evaluation Unit (AREU), UNDP JHRA, United Nations Environment Programme (UNEP), Afghan Land Consulting Organisation (ALCO) and UN Women

Venue: UNHCR Conference Room, Kabul

Agenda:

0. Introductions & approval of April 2014 meeting minutes
1. Update on USIP's Land Conflict Project
2. Presentation by UNEP – Conflict-sensitive natural resource management in Afghanistan, country study results and EcoDRR
3. Updates from the Regional HLP Task Forces (West, East and North -with a focus on April/May flood response)
4. AOB

I INTRODUCTION

Minutes of the 22 April 2014 meeting were endorsed without comments. The Chair pointed out that the pending presentation on women's HLP rights from last month's meeting will be handled in the month of June when the National Task Force plans to hold a special thematic meeting on Women's Housing, Land and Property Rights (WHLPR).

II AFGHANISTAN'S LAND SECTOR DEVELOPMENTS

See attached presentation for details

1. Lillian Dang (Senior ROL Programme Coordinator) and Gul Rahman Totakhail (USIP's Senior Legal Advisor who is also supporting ARAZI (Afghanistan Independent Land Authority) updated the Taskforce on USIP's Land Conflict Project describing project component goals and update on couple of initiatives.

2. Gul Rahman pointed out that in a couple of months' time the Procedures or Guidelines for ARAZI for dispute resolution will be finalised and introduced to the relevant stakeholders through workshops and meetings. They have developed a mechanism of recording land dispute resolutions and studied 20 potential cases as pilot in Khost and Kunduz province via TLO and PTRO (partner organizations of USIP). USIP and ARAZI plan to hold a national conference once these guidelines on land dispute resolution are finalized and the required number of land disputes are resolved in Khost and Kunduz by traditional dispute resolution (TDR)-ARAZI model and the system and outcomes of land disputes recorded in the registration book handed over to the respective ARAZI offices for broader discussion and decision making. The Procedures on Land Disputes Resolution once finalized and agreed by ARAZI and USIP may be shared with the HLP TF members as well.

The current Land Acquisition Law (LAL) is from the time of the Taliban regime and is undergoing amendments and review. Gul Rahman mentioned that the public consultations are currently underway: the Mazar and Herat public consultation workshops were recently finalized and Jalalabad and Kabul public consultation are going to be held in the near future. There will be a special consultation for the international community and the date will be informed by ARAZI or USIP to the HLP TF in due course.

Discussion:

1. Participants raised the following questions:

a) Regarding the land disputes procedures, one of the concerns raised by AIHRC is that oftentimes the customary dispute resolution does not cater to the rights of the women or rather undermines it. So has USIP through this project ensured protective measures for women?

The Procedure or Guidelines of ARAZI is drafted in such a way that it covers all the rights (including the Civil Procedure Code) and thus ensures protection with the consultation of Shura and Jirgas. The procedures ensures that women are provided opportunities to participate and in their absence their Mahram can represent them especially, inheritance. In addition, provisions of civil laws and other legislation will be considered while resolving the land disputes.

b) GDMA colleague requested clarity on couple of issues- what are the loopholes in the existing LAL that needs to be rectified? Why is Municipality which deals with urban land not involved in the LAL Task Force or the public consultations?

Also is the LAL mindful of the Informal Settlement Upgrading Policy developed by MUDA?

Gul replied that the current law on Land Acquisition is from the time of the Taliban regime and therefore the need for the review and amendments. The current law is only responsive to urban and

municipal land and not to the rural land which is one of the main shortcoming and deficiency of the law which the new amendments are trying to redress.

Gul Rahman also wanted to clarify the following main changes in the law (which due to time constraints could not be raised during the meeting):

- It covers all land acquisition processes in the country including rural and urban areas, whereas the current one is limited to the urban areas;
- Emergency and urgent acquisition have been considered;
- Resettlement have been introduced in the law;
- Fair compensation to not only directly affected people but also to be paid to those who are indirectly affected (tenants, share croppers, farmers etc) ;
- Just, Fair and Market value based compensation will be paid;
- Public participation has been considered in the acquisition process;
- Public hearing of the objections regarding the acquisition process has been considered;
- Right sizing of the land has been considered;
- Acquisition is restricted to the welfare of the people and society;

c) Did ARAZI/USIP consider the Forced Eviction Guidelines while making the amendments to the land acquisition law? The Forced Eviction Guidelines has been shared with Land Acquisition Law Task Force (LAL-TF) members and the TF considered the urgent and emergent acquisition in the draft. Additionally, a new chapter of resettlement has been considered in the law due to the FE Guidelines.

d) What are the challenges in this Legal disputes procedures being developed and how does it conflict with the Jirga Law being reviewed by the Ministry of Justice or the procedures set out by Huquq law?

The purpose of the draft Jirga law is to regulate the affairs related to the Shuras and Jirgas in the country, it is in general not specifically about land dispute resolution and does not provide detailed procedures, processes and mechanisms on how to resolve land dispute and it has been pending for almost 3 years. It is good to hear that the Jirga law is being reviewed (and is resurfacing) by the MoJ, as it will be a significant step towards strengthening the informal justice system.

Huquq department of MoJ also addresses civil disputes both land, financial and others referred to them as per the Law on Obtaining Rights. If disputant parties are in agreement about the decision of Huquq, then the dispute is finished, however if the disputant parties intend to refer the case to Shura, the Huquq department does so. Alternatively, the Huquq department refers the case to the court. In short, this department is like a bridge between people and the courts.

Land dispute resolution procedure (under review) will focus only on land disputes and provide clear guidelines and processes for traditional dispute resolution (TDR) and ARAZI to resolve land disputes appropriately.

e) With regard to expansion of the project Gul Rahman mentioned that it is currently being piloted in two provinces. Outcomes of the project will be recorded and analyzed. If the result is positive, the land dispute resolution activities will be expanded to other provinces as well.

For the time being ARAZI has a new department for land disputes but this body is not available at provincial level. Almost 70% of disputes are being resolved informally, so ARAZI will coordinate with these informal dispute resolutions.

f) Regarding the question about how is ARAZI ensuring the quality or accuracy of the information recorded on its books on land dispute resolutions, USIP responded that they are supporting the development of administrative procedures and case management tools to record Traditional Dispute Resolution (TDR) land dispute resolution outcomes. ARAZI does not make a substantive assessment of the dispute, the outcome of which is mutually agreed to by parties in the TDR process. ARAZI is only coordinating with TDR forums to register the outcomes of dispute resolutions, as a starting point to temporary title registration.

III Environment and Peace-building in Afghanistan

Andrew Scanlon, Country Manager for UNEP, presented briefly about Environment & Peace building in Afghanistan. Andrew pointed out through the UNEP's report on Natural Resource Management & Peace building in Afghanistan (attached) about how disputes over the management of natural resources such as land, water, timber, minerals and drugs underlie and drive many conflicts. He highlighted an Oxfam Study which shows that majority of the disputes are land and water related. Through its report the questions that UNEP raised were threefold:

1. Which conflicts in Afghanistan have an environmental/ natural resource dimension?
2. Could better management of those natural resources support wider peace building?
3. How can the international community ensure its development projects and interventions don't make the situation worse?

Full presentation and UNEP's NRM report are enclosed.

Discussion

a) One participant requested clarity on the number of extractive industries that are currently operational in Afghanistan. Andrew pointed out that currently majority of us are only aware of Aynak and Hagijak but there are more than 600 mining contracts up for grabs (in discussion or licenses issued). Therefore there needs to be more socialization about the issue of eminent domain/land expropriation, development induced displacement, revenue distribution and benefit sharing and environmental impact.

b) Regarding the query about how do we reconcile the immediate humanitarian needs and the environmental protection in Afghanistan. For instance the shelter cluster - how can they ensure that more trees are not denuded for their shelter intervention or that there are sufficient afforestation programmes?

Humanitarian and life-saving interventions are critical but we can be careful in these interventions. The international community can ensure that their intervention and development projects don't make the situation worse/Do No Harm principles. If we are talking of afforestation programmes then look at

endemic species and not Poplar trees (imported from China, US, Australia etc) which you find everywhere in Afghanistan. There is a distinct possibility that this could end up with a beetle or pest and wipe out all these monoculture trees. Similarly the wood burnt during winters (cedar trees which are forests that have taken hundreds of years).

c) For addressing challenge of air pollution, Andrew was of the opinion that it is better to focus on better/smart urban planning and ensure the massive growth of cities in Afghanistan is managed better; not only service provision but issues of pollution, waste management etc.

IV Updates from Regional HLP Task Forces

1. Western Region: Presentation attached.

Shobha, HLP TF Coordinator, highlighted the land issues in three sites in Herat which are currently hosting the new influx of IDPs from Ghor and Badghis- Saadat, Karizak and Pashdan.

1. **Saadat** Land Allocation Scheme site - No relocation alternative offered for the IDPs who were moved from Pashdan to this site. The IDPs are facing harassment by refugee returnees and other allottees to leave the house and land. NRC & UN Habitat are following up on this issue and will also ensure regular monitoring of the situation.

2. **Karizak** - Karizak IDPs are living in tents close to the mountain on land which allegedly is being allocated to IDPs from Shaidayee by the Herat Municipality. The payment for each plot of land thus allocated is 20,000 AFS (lump sum for 3 biswa and not installments). So far 896 & 582 plots have been distributed in two batches but Herat Municipality does not want to share any documentation regarding this allocation. Also there are no demarcation on this land. This is also a ripe situation for further conflicts as the new influx of IDPs in Karizak may in future face harassment from the Shaidayee IDPs who are buying these land. UN Habitat and NRC are following up the land allocation situation by Municipality.

3. **Pashdan**: this site is more than 15 kms away from Herat city and the IDPs from Ghor and Badghis are staying in tents provided by various humanitarian agencies and ANDMA. The land ownership is disputed—private persons vs government. Governor has requested the private claimants to wait till this ownership issue is resolved. ARAZI (in Herat) claim it to be Government land. ***Apart from the land issue the other challenge is that many of the IDPs are living in really small and poor quality tents.*** The stay which was considered an emergency intervention to last for three months only has continued for eight months and the tents are really small and not even adequate to shelter the family from the elements i.e. harsh wind, heat etc. Some IDPs have started making bricks to construct houses on the site but with land ownership contested and no decision being made by the government due to the election flux the situation is dire including livelihood challenges due to the distance from Herat city.

Maslakh: There have been some reports that families have moved from Maslakh and returned to their places of origin. It could be useful to investigate this possibility, including by conducting an assessment to see how many families are presently at Maslakh, to see whether IDP families from Pashdan might be

accommodated, given the closer proximity to livelihoods opportunities and greater availability of services.

2. Northern Region:

Nicholas Leftwich, NRC Shelter Programme Manager updated about the Shelter Response in the North (landslide and floods) including NRC's shelter response.

Full presentation is enclosed.

Discussion:

1. IOM raised the question of beneficiary figures. It was pointed out that Nicholas had used the figures provided by the Shelter Cluster in the North which were updated on 19 May (a day prior to this meeting) and were in variance to the figures presented by IOM. OCHA stated that it would follow up with respect to the most current numbers.

2. Regarding DRR shelter model - Nicholas pointed out that it was a pilot initiative and thus they would follow up on issues of price, sourcing of stones (in places with lack of these stones) and need for skilled stone masons to work on these houses. At present, however, NRC has noted the challenge of rebuilding with stone foundations across the board, and recognizes that without adequate assistance, families may be tempted to rebuild the same structures that existed before the floods.

Also the issue of how the community will adapt this model needs socializing as this is a new model and there could be challenges of acceptance in the larger community. (and the impact it could have on poor vulnerable beneficiaries).

The HLP TF Coordinator pointed out that so far no systematic and comprehensive HLP assessments have been undertaken in the North but the TF is advocating on couple of issues at various forums regarding the flood and landslide response:

- As the flash floods are an annual phenomenon the government actively needs to pursue identification of evacuation points and safe areas for relocation of people in these flood prone areas. We understand that land availability is a huge constraint and also that it may be difficult to convince the people to move to other locations however this difficult choice needs to be made to avoid people in many of these flood prone areas losing their housing, land and properties on an annual basis and becoming more and more vulnerable.
- The assessment reports from the North demonstrate that land documentation and Tazkera have been lost in many places. There needs to be a systematic and comprehensive approach to address this. Names of displaced people should be recorded and caseloads with people with missing documentation should be highlighted to authorities and preventive measures put in place for ensuring speedy recovery of Tazkera and land documentation by the government. The information on loss of housing, land and property is also critical to follow up on any compensation or restitution system that may be set in place in due course by the government.

- Furthermore, loss of property documentation can also contribute to conflicts (especially land conflicts more so for post emergency and reconstruction phase). This may be aggravated for customary deeds. Assessments should be carried out focused on this issue in all the communities. HLP TF is trying to open up discussion with authorities to ensure this issue is taken up urgently.

The HLP TF Coordinator is in touch with agencies in the North and plans to visit North soon to ensure HLP issues are mainstreamed in current assessments and advocacy efforts.

Regarding the issue of restitution of loss of agricultural land, livestock etc OCHA pointed that the Food Security and Agriculture Cluster (FSAC) has been documenting this information and there is need to coordinate with them. The HLP TF Coordinator agreed to link up with FSAC cluster to follow up this issue.

One of the concerns raised is that relocation to small plot of land where only a shelter is feasible is not a solution for some of the flood affected people who have lost agricultural land as agriculture is their only means of livelihood. The HLP TF Coordinator agreed to flag this issue with the DRR Task Force.

Badakshan update: It was reported that the provincial government has identified a relocation site for families affected by the landslide. Although the details remain unclear, there are indications that the government may be in the process of purchasing a plot of land at a distance of 2-3 km from Ab Barek. With a relatively short timeline to conclude the relocation before the start of winter, the HLP Task force will need to act quickly to ensure that any relocation is voluntary, targets the most vulnerable families, and involves the affected families in the process. Issue to be followed up as more information becomes available.

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| V MISCELLANEOUS/AOB |
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Due to paucity of time the update from the Eastern Region which was about the Nuristani Kamdesh Koshtoz Intertribal Jirga could not be shared. ***The presentation and UNAMA background paper are attached along with the minutes.***

The date/time and venue of the next (June 2014) national HLP TF meeting will be announced via e-mail.